

about what I think our responsibility is with respect to this wiretapping surveillance stuff and our responsibility as Members of Congress, and really as citizens of this country, because we each have an obligation as citizens to do these same things, to uphold the Constitution and the rights that we all enjoy under the Constitution and to make our citizenry safe, to help make our families safe, our neighborhoods safe, our communities safe.

There is a way under the law as we have revised this surveillance law to do both of those things. We have fixed this technical problem that existed where foreigners were given certain rights under our Fourth Amendment that they weren't entitled to. We have corrected that in this law. But we have maintained the Fourth Amendment and the First Amendment and the Third Amendment and everything else within the Constitution for each and every American by including the courts to oversee this and supervise when the government says we want to eavesdrop on a citizen, and we are demanding of the President and the telecommunications companies, we want to see what it is you are asking us to let you off the hook about.

That is what is being asked. And they are saying sorry, we are not going to let you look at that. Therefore, we are going to say, then we are not doing our job. We are not going to just let you go get a get-out-of-jail-for-free or go scot-free without information. We are not doing our job then. We are not being accountable and responsible to our constituents.

As the President has laid this out, he is just trying to stir up fear in the American populace, which is wrong. He is trying to avoid the courts as being a check and balance on the awesome power of the Federal Government to invade our privacies. He doesn't want that, and he is asking us to give this carte blanche amnesty without really giving us the basis for that, and I object to all of those things. With that, I yield back to my friend.

Mr. YARMUTH. There is some other history we haven't talked about tonight yet, and that is the background of this controversy. Because what we fail to remember as we debate this issue, and obviously I think we want to deal with this prospectively, we want to make sure that this country has the power, the government has the power and authority and tools it needs to provide legitimate security for this country.

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But this program started right after September 11, 2001, and continued for 4 years before it was exposed by the New York Times. So this was a long-standing violation of the law, a deliberate avoidance of the law by the administration. They could at any time after 9/11 have come to Congress and said, we want some additional authority. But they didn't do that. They knew

that it would be tough. Even a Republican Congress at that time might have looked askance at requests to do warrantless wiretapping, so they just did it by themselves for 4 years. Then, when it was uncovered, this Congress under Republican leadership rushed to pass the Protect America Act, a stop-gap measure because, obviously, it was embarrassing and they needed to do that.

But this is a longstanding deliberate ignoring of the law, and this is something that it doesn't matter whether the government sanctioned it; if companies did it and violated the law, as I said at the outset of my remarks standing right behind you, Mr. KAGEN, the words described in that dais, justice. And that is what this country has been built on. And this is a long-standing violation that needs to be redressed, and we shouldn't just say, because the government asked them to do something, that it is okay, that they broke the law. Because if that is the precedent we are setting, there is no end to the imagination of horrors that could happen if the government were able to immunize anyone for any violation of the law.

With that, I would like to yield again to CAROL SHEA-PORTER from New Hampshire who has joined us.

Ms. SHEA-PORTER. I would like to point out that if the President and his supporters managed to cut out the judicial branch, then the authority for this would go to the Attorney General and the Director of National Intelligence. Our most recent former Attorney General was Alberto Gonzalez, and I think that we do not wish to put that kind of power into the hands of people who may not see the government's role the way that we do. So I have deep concerns about that. But, again, this is not an issue of what party you are in. This is an issue of whether you are an American and you believe in our Constitution or not.

I wanted to quote Andrew Napolitano, who was a New Jersey Superior Court Judge from 1987 to 1995, and is the senior judicial analyst at Fox News. He is upset about this as well, and he said: Those who believe the Constitution means what it says should tremble at every effort to weaken any of its protections. The Constitution protects all persons and all people. And, he said, if we lower constitutional protections for foreigners and their American correspondents, for whom will we lower them next?

And that really is the question. We stand our ground now, and we protect at least our American citizens from this eavesdropping.

The question earlier was, well, what do you have to hide? And I would say that even though you may not be placing phone calls that have anything to do with any government business, you may be having a conversation about your boss's wife or husband. You may be having a conversation about your husband's problem at work. You may

be having a conversation about your neighbor. And any of those conversations, if they were overheard, could be used against you. So it is not simply the kind of setting that we are talking about right now, not a grander setting, a setting where it is national security, but simply your right to privacy and for your neighbors not to know the kinds of thoughts and the kinds of words that you share with people in private phone conversations. So we have this obligation to stand here and protect all of us.

FISA

The SPEAKER pro tempore (Mr. BRALEY of Iowa). Under the Speaker's announced policy of January 18, 2007, the gentleman from Texas (Mr. BURGESS) is recognized for 55 minutes.

Mr. BURGESS. I thank the Speaker for the recognition.

It has been an interesting and entertaining hour that we have just been through. I came to the floor tonight to talk a little bit about the Middle East, but after hearing the comments for the last hour I would just remind my friends that the Senate passed a bill that passed with a fairly significant majority over in the Senate. And if the Senate-passed bill were brought to the floor of the House, we would have our FISA legislation reestablished. There are enough Members on their side combined with the Members on my side where the bill would pass without any difficulty. But it has been the lack of the will of the House leadership to bring this very important bill to the House and once again establish a modicum of protection for America, because, after all, despite all the lofty rhetoric we just heard in the last hour, it is not surveillance of American citizens on American soil, it is surveillance of individuals who are outside of America, outside the shores of America who are communicating with each other. But because of the nuances of the telecommunications system, those wires may pass through the United States, a server may exist in the United States, and therein the problem lies.

And it is important, because as I talk about the Middle East I am going to come back to this issue on the Foreign Intelligence Surveillance Act, because the lack of a functioning Foreign Intelligence Surveillance Act is actually hampering some of our progress in the Middle East and I think it is important to draw that distinction.

Again, as I said, Mr. Speaker, I just returned a little over a week ago from a trip to Afghanistan, Pakistan, and Iraq. As a consequence, I was also in Kuwait briefly. But it is significant, and probably the first time where I have been in those three countries in that short a period of time. It is instructive to visit those countries in that condensed time period, because you really get a sense of how interconnected the successes and/or failures